IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

WA.No. 2079 of 2006(C)

AGAINST THE JUDGEMENT IN O.P.14542/2002 DATED 17/07/2006
.....

APPELLANT/PETITIONER:

V.RAMACHANDRAN,
EDAKKADU HOUSE, CHITHALI P.O.,
KUZHALMANNAM, PALAKKAD.

BY ADV. SRI.P.RAVINDRAN,
SRI.V.G.SANKARAN,
SRI.HARIKRISHNAN RAVINDRAN.

RESPONDENTS/RESPONDENTS:
----

1. **MANAGING DIRECTOR,**
   MALABAR CEMENTS LTD., WALAYAR P.O.,
   PALAKKAD.

2. **THE LABOUR COURT,**
   KOZHIKODE.

BY ADV. SRI.B.S.KRISHNAN (SR.),
SRI.K.ANAND ,
SMT.LATHA KRISHNAN,
GOVT. PLEADER SRI. P.A. SALIM.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 12/03/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & T.R.RAMACHANDRAN NAIR, JJ.

W.A.No.2079 OF 2006

Dated 12th March, 2007

JUDGMENT

Koshy,J.

Appellant was employed as a worker in Malabar Cements Ltd., a Kerala Government undertaking. He was charge sheeted for unauthorised absence from 7.5.1991 to 20.6.1991. He was again charge sheeted alleging that while on duty on 20.3.1994, when he was asked by the Tester-cum-Ganger to take out clinker sample from the laboratory ball mill, he refused to carry out the work. It is also alleged that on 30.3.1994 while the worker was on duty, he entered in the office of the Chief Chemist and abused him and also threatened him. Two separate domestic enquiries were conducted. The appellant was given full freedom to participate in the enquiries. The respective Enquiry Officers found him guilty in both the above charges and management after complying with all the procedural formalities decided to dismiss him from service and accordingly dismissal order was passed. The matter was challenged before the Labour Court. The Labour court considered the matter and found that both enquiries were conducted in accordance with the principles of natural justice. It was further found by the Labour court that no

evidence was adduced to show that there is any victimization on behalf of the management. It was also found by the Labour Court that findings of the Enquiry Officers are not perverse and based on evidence and there is no evidence to show that the alleged misconducts were not committed by the appellant. Findings of the Enquiry Officers were fully concurred by the Labour Court. Thereafter, by using powers under section 11A of the Industrial Disputes Act, dismissal of the worker was converted into discharge so that he will get the retiral benefits. Learned Single Judge refused to interfere in the above order.

2. The major contention raised before us is that the findings of the Enquiry Officers were not forwarded to the appellant before deciding to dismiss him from service and he relied on the Constitution Bench decision of the Apex Court in **Managing Director, ECIL** v. **B.Karunakar** ((1993) 4 SCC 727). It is true that the Apex Court held that if enquiry is conducted by an officer other than the disciplinary authority, as a part of the principles of natural justice, findings of the Enquiry Officer should be furnished to the employee and he should be given an opportunity to explain and then only disciplinary authority

can take final action. But, it is also held in the above decision itself that even if Enquiry Officer's findings are not forwarded to the delinquent employee, the disciplinary action need not be set aside provided no prejudice is caused to him. In this case, before finally deciding to punish the employee, a show cause notice proposing the punishment was issued to the appellant. Along with the show cause notice findings of the Enquiry Officers were also furnished to him and the appellant filed a detailed reply regarding the enquiries as well as the proposed findings. Therefore, before final decision was taken up by the employer, the employer forwarded the Enquiry Officers' reports and his explanation was considered and then only final disciplinary proceedings were taken. Therefore, no prejudice has been caused on that behalf. Apart from that, under section 11A of the Industrial Disputes Act, Labour Court has power to consider the validity of the enquiry including findings of the enquiry officer. Labour court went through the matter in detail and found that enquiries were conducted in accordance with principles of natural justice and there is no perverse finding. Findings of the Enquiry Officers are correct and there is no victimization. Hence, no prejudice is caused to the worker. With regard to the punishment aspect, the Labour Court has taken a

lenient view by exercising powers under section 11A of the Industrial Disputes Act. We see no ground to interfere in the judgment of the learned Single Judge in affirming the order of the Labour Court.

The appeal is dismissed.

J.B.KOSHY
JUDGE

T.R.RAMACHANDRAN NAIR
JUDGE

tks